Learning Objectives

This chapter is to help students understand:

1. The most-favored nation and national treatment obligations under TRIPs compared with those under GATT and GATS;
2. Copyright and related right protection under TRIPs;
3. Trademark protection under TRIPs;
4. Geographical indication protection under TRIPs;
5. Industrial design protection under TRIPs;
6. Patent protection under TRIPs;
7. Layout-designs protection under TRIPs;
8. Undisclosed information protection under TRIPs.

10.1 Copyright

10.1.1 Provisions from the Berne Convention

During the Uruguay Round negotiations, it was recognized that the Berne Convention for the Protection of Literary and Artistic Works already, for the most part, was providing adequate basic standards of copyright protection. Thus, it was agreed that the point of departure should be the existing level of protection under the Berne Convention.

1 For the definition of literary and artistic works, see Berne Convention, supra note 20, at Art. 2(1). The Berne Convention leaves member countries to choose whether their national legislation shall impose such a requirement, while the domestic law like the United States law[17 U.S.C.A. § 102 (a)] requires that an artistic or literary work be fixed in a tangible medium of expression in order to be protected by copyright law. Berne Convention, supra note 20, Art. 2(2), Ugolini (1999), supra note 26, at. n. 37.

Convention\textsuperscript{3}: The TRIPs Agreement requires compliance with the basic standards of the Berne Convention, and then, clarifies and adds certain specific points. The Agreement is structured along the lines of the so-called “Berne-plus” approach.

The Berne Convention for the Protection of Literary and Artistic Works is administered by WIPO.\textsuperscript{4} With the exception of the provisions on moral rights, all the substantive provisions of the latest act of the Convention, the Paris Act of 1971, have been incorporated by reference into the TRIPs Agreement and thus become obligations under the TRIPs Agreement between TRIPs Member countries.\textsuperscript{5} The Convention provides the basic principles, that is, national treatment, automatic protection and independence of protection, minimum standards of protection, permissible exceptions, terms of protection and so on.

The Convention provides national treatment\textsuperscript{6}: works originating in one of the contracting States must be given the same protection in each of the other contracting States as is granted to the works of its own nationals.\textsuperscript{7} Regarding automatic protection, protection may not be subject to any formality of registration, deposit, or the like.\textsuperscript{8} Regarding independence of protection, enjoyment and exercise of the rights granted are independent of the existence of protection in the country of origin.\textsuperscript{9}

\textsuperscript{3} TRIPs Agreement, \textit{supra} note 22, Part II, Section 1, Art. 9.
\textsuperscript{5} The Paris Act of 1971, of that Convention. \textit{Supra} note 45. The point of departure is expressed in Art. 9.1 under Members are obliged to comply with the substantive provisions of the Paris Act of 1971 of the Berne Convention, i.e. Arts. 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Art. 6bis of that Convention, i.e. the moral rights (the claim to authorship and to object to any derogatory action in relation to a work, which would be prejudicial to the author’s honour or reputation), or of the rights derived therefrom.
\textsuperscript{6} The Convention, for example, permits member countries to treat the works of authors who are nationals of nonmember countries no less favorably than they treat their own nationals when those nonmember countries fail to adequately protect the works of authors who are nationals of a member country. See Berne Convention, \textit{supra} note 20, at. 6(1).
\textsuperscript{7} Berne Convention, \textit{supra} note 20. Art. 5(1).
\textsuperscript{8} Berne Convention, \textit{supra} note 20. Art. 5(2). Universal Copyright Convention permits a member country to require formalities for protection of works first published outside of its territory or in another member country. “Formality” is only the symbol along with the copyright owner’s name, and the date of first publication born in the work. See Universal Copyright Convention, Sept. 6, 1952, 6 U.S.T. 2731, 216 U.N.T.S. 134, revised by 25 U.S.T. 1341, 943 U.N.T.S. 178, July 24, 1971.
\textsuperscript{9} Berne Convention, \textit{supra} note 20. Art. 5(2)